

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE FAJARDO LAZIL

v.

BUREAU OF IMMIGRATION AND
CUSTOMS ENFORCEMENT

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CIVIL ACTION

NO. 03-CV-6764

SURRICK, J.

MARCH 31, 2005

MEMORANDUM & ORDER

Presently before the Court is Lora Craddock's Petition for Writ of Habeas Corpus (Doc. No. 6), and the Government's Motion to Dismiss Lora Craddock's Petition for Habeas Corpus Relief Pursuant to Federal Rule of Civil Procedure 12(b)(1) (Doc. No. 8). For the following reasons, the Government's Motion will be granted and Craddock's Petition will be dismissed.

I. BACKGROUND

Craddock asserts that she is the common law wife of Jose Fajardo Lazil, a permanent resident alien and a citizen of the Dominican Republic currently in the custody of the Bureau of Immigration and Customs Enforcement ("BICE"). (Doc. Nos. 3 Ex. 1; 6 at 1-2.) Lazil is subject to an order of removal dated October 15, 1998. (Doc. No. 3 Exs. 10, 1.) After being released on bond pending the outcome of his appeal of the removal order,¹ Lazil apparently remained at large until June 16, 2003, when officers from the Lehigh County took him into custody and placed him in the Lehigh County Prison.² (Doc. No. 1 ¶¶ 2, 5.) After BICE officials were notified of Lazil's

¹ Lazil failed to file a timely appeal from the removal order with the Board of Immigration Appeals. (Doc. No. 3 Ex. 11.)

² It is unclear from the record why Lazil was apprehended and taken into custody.

detention, Lazil was transferred to the York County Prison in preparation for deportation to the Dominican Republic. (Doc. Nos. 1 ¶ 6; 3 at 8.)

On December 17, 2003, Lazil filed a pro se Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. No. 1.) We granted Lazil provisional leave to proceed *in forma pauperis*, and entered an injunction staying Lazil's deportation until further notice. (Doc. No. 2.) Lazil's Petition is pending before this Court.

On June 3, 2004, Craddock filed a pro se pleading captioned "Petition For The Release Of My Commonlaw [sic] Husband And Father Of My Two Children. Petitioner And Children Are Joined in this Petition Because They Are Suffering Serious Hardship Due To Deportation Proceedings Of A Husband And Father." (Doc. No. 6.) Citing 28 U.S.C. § 2241, Craddock asserts that Lazil should be released from custody. (*Id.* at 1-2.) Since Craddock is acting pro se, we will liberally construe her pleading as a Petition for Writ of Habeas Corpus under § 2241. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *see also Davis v. Fechtel*, 150 F.3d 486, 487 (5th Cir. 1998) (holding that a court may liberally construe a pro se pleading, where appropriate, as habeas corpus petition).

II. DISCUSSION

Craddock seeks the release of Lazil pursuant to 28 U.S.C. § 2241, the general federal habeas corpus statute. Under § 2241, however, only a person "*in custody* in violation of the Constitution or laws or treaties of the United States" may seek relief through a petition for writ of habeas corpus. 28 U.S.C. § 2241(c)(3) (2000) (emphasis added); *see also Maleng v. Cook*, 490 U.S. 488, 490 (1989) ("The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are 'in custody in

violation of the Constitution or laws or treaties of the United States.’” (quoting 28 U.S.C. § 2241(c)(3))). Craddock does not allege that she personally is in custody in violation of federal law. Accordingly, she cannot seek habeas relief under § 2241. *See, e.g., Yang Jing v. Ashcroft*, Civ. A. No. 04-0409, 2004 U.S. Dist. LEXIS 9703, at *3 (E.D. Pa. May 29, 2004) (“The writ of habeas corpus is available only to persons held ‘in custody in violation of the Constitution or laws or treaties of the United States.’” (quoting 28 U.S.C. § 2241(c)(3))); *see also Gutierrez v. Gonzales*, No. 03-4798 et al., 2005 U.S. App. LEXIS 4502, at *14 (3d Cir. Mar. 16, 2005) (holding that “§ 2241(c) requires a petitioner to be ‘in custody’ as a jurisdictional prerequisite”).

Craddock also does not have standing to pursue habeas relief for Lazil under the “next friend” doctrine. A “next friend” may appear in court “on behalf of [a] detained prisoner[] who [is] unable, usually because of mental incompetence or inaccessibility, to seek relief” himself. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990) (citing *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 13 n.3 (1955)). A person who seeks to take advantage of the “next friend” doctrine must, however, “provide an adequate explanation -- such as inaccessibility, mental incompetence, or other disability -- why the real party in interest cannot appear on his own behalf to prosecute the action.” *Id.* at 163. The burden of proving “next friend” status rests with the moving party. *Id.* Here, Craddock has not established that Lazil is incapable of pursuing his own relief. In fact, Lazil has already filed his own pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, in which he asserts several challenges to his detention, including: (1) that the Immigration Judge erroneously determined that Lazil was not entitled to seek relief from deportation under 8 U.S.C. § 1182(c) (repealed 1996), because he retroactively applied the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. 104-132, 110 Stat.

1214 (1996), and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (1996); and (2) that his continued detention by BICE violates his equal protection and due process rights. (Doc. No. 1 ¶¶ 12-13, 16.) Craddock thus lacks standing to act as “next friend” for Lazil. Her Petition therefore will be dismissed.

An appropriate Order follows.

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AND NOW, this 31st day of March, 2005, upon consideration of Lora Craddock's Petition for Writ of Habeas Corpus (Doc. No. 6, 03-CV-6764), and the Government's Motion to Dismiss Lora Craddock's Petition for Habeas Corpus Relief Pursuant to Federal Rule of Civil Procedure 12(b)(1) (Doc. No. 8, 03-CV-6764), it is ORDERED that the Government's Motion is GRANTED. Craddock's Petition is DISMISSED.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge